

ITEM 18

STAFF REPORT ON PUBLIC COMMENT AND PROPOSED MODIFICATIONS AFTER CLOSE OF PUBLIC COMMENT PERIOD

CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5 SECTIONS 1183.09, 1183.21, AND 1188.31,

Dismissal of Actions Postponed or Placed on Inactive Status

Staff Analysis

Background

In February 2000, the Commission initiated a rulemaking proposal (Exhibit A) to establish procedures for dismissal of a pending action, postponed or placed on inactive status at the request of a party or claimant, which is not reactivated within one year from the date of the postponement or placement on inactive status. While the Commission's current regulations do not provide procedures for dismissal they do provide procedures for parties to withdraw test claims, incorrect reduction claims, applications for findings of significant financial distress, requests to review the Controller's claiming instructions, and amendments to parameters and guidelines. This proposed rulemaking package allows the Commission to dismiss actions that, in effect, have been withdrawn by the party's or claimant's failure to re-active an action within a year after its request for postponement.

On June 29, 2000, the Commission conducted a public hearing on the rulemaking proposal. The 45-day public comment period also closed on that date. Testimony (Exhibit B) and written comments (Exhibit C) were received from the following persons:

1. Pam Stone, California State Association of Counties (CSAC), and League of Cities, and SB 90
2. James A. Cunningham, San Diego Unified School District (SDUSD)
3. Carol Berg, Ph.D., Education Mandated Cost Network (EMCN)
4. Marcia Faulkner, County of San Bernardino

A summary of the comments received during the 45-day public comments is attached as Exhibit D. The commentators proposed several clarifying and technical amendments. Based on these comments staff modified the text of the regulations to make the following changes to the proposed text:

- The time for notice of a dismissal of a test claim was expanded from 60 days to 150 days.

- The notice provisions were amended to provide that, in the case of the dismissal of a test claim, notice shall be made to all potential claimants.
- The proposed regulations were amended to clarify that another local agency or school district may substitute in as a test claimant.
- The proposed regulations were amended to provide that notices of dismissals shall be posted electronically.
- The proposed regulations were amended to provide that postponements made by the Commission or other state agency and postponements made pending the outcome of a similar test claim issue either before the Commissions or the courts shall not be included in determining whether a test claim has been postponed or placed on inactive status for more than one year.

At the August 24, 2000 hearing the Commission approved the modified text. On August 25, 2000, the proposed regulations, as modified, were mailed to all commentators and interested parties. The 15-day public comment period on the modified text closed on September 11, 2000. No comments were received during this 15-day comment period.

Recommendation

Staff recommends that the Commission approve staff's proposed regulatory text as modified on August 24, 2000.

FINAL TEXT OF REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 2. FINANCIAL OPERATIONS CHAPTER 2.5. COMMISSION ON STATE MANDATES

ARTICLE 3. TEST CLAIMS & ARTICLE 7 HEARINGS AND DECISIONS

ARTICLE 3. TEST CLAIMS

ADD SECTION 1183.09 TO READ:

§ 1183.09. Dismissal of Test Claims.

(a) A test claim which has been postponed or placed on inactive status by the claimant for a period of more than one year may be dismissed by the commission on its own motion or by a motion of a party after notice and an opportunity to be heard has been made to the claimant, parties and interested parties to take over the claim by substitution of parties.

(b.) Before scheduling a hearing for dismissal of a test claim, the commission shall first notify the claimant, in writing, of its intention to initiate dismissal of the test claim. The claimant shall have 60 days from the date of the notice to either reactivate the test claim or to withdraw the claim in accordance with Section 1183.08 of these regulations.

(c) If the claimant does not respond within 60 days after receipt of the notice, the test claim will be deemed to have been withdrawn in accordance with Section 1183.08 of these regulations and the commission shall serve written notice to initiate dismissal of the claim to all parties; organizations or associations representing local agencies or school districts; and all potential claimants. A copy of the notice shall also be posted electronically. If no other local agency or school district takes over the claim by substitution of parties within 60 days of the issuance of the notice, the commission shall schedule a hearing for dismissal of the test claim.

~~(b)~~ (d) The hearing on a dismissal of a test claim shall be conducted in accordance with Article 7 of these regulations.

~~(c)~~ (e) Notice of a hearing to dismiss a test claim shall be made within 60 30 days of the date scheduled for hearing. ~~(d) The notice of hearing shall advise commission shall~~ notify the claimant, parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss a test claim within 45 days of receipt of the notice of the hearing. The claimant, parties, and interested parties shall submit an original and two (2) copies of their written comments to the commission and a copy shall be simultaneously served to all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(f) Delays or postponements under the following circumstances will not be considered for purposes of computing whether a test claim has been postponed or placed on inactive status by the claimant for more than one year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the claimant, pending the resolution of a matter currently before the commission of an issue similar to or related to the postponed test claim; and

3. Delays or postponements, made at the request of the claimant, pending the resolution of litigation of an issue similar to or related to the postponed test claim.

(g) The provisions of this regulation shall only apply to claims filed on or after the operative date of this regulation.

NOTE: Authority: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c), and 17532, Government Code.

ADD SECTION 1183.21 TO READ:

§ 1183.21 Dismissal of Requests for Amendments to Parameters and Guidelines.

(a) A request for amendments to parameters and guidelines which has been postponed or placed on inactive status by the requesting party for a period of more than one year may be dismissed by the commission on its own motion or by a motion of a party after notice and an opportunity to be heard has been made to the claimant, parties and interested parties.

(b) The hearing on a dismissal of a request to amend parameters and guidelines shall be conducted in accordance with Article 7 of these regulations.

(c) Notice of a hearing to dismiss a request to amend parameters and guidelines shall be made within 60 days of the date scheduled for hearing. A copy of the notice shall also be posted electronically. ~~(d)~~ The commission shall notify the claimant, parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss a request to amend parameters and guidelines within 45 days of receipt of the notice of the hearing. The claimant, parties, and interested parties shall submit an original and two (2) copies of their written comments to the commission and a copy shall be simultaneously served to all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Delays or postponements under the following circumstances will not be considered for purposes of computing whether a request for amendments to parameters and

guidelines has been postponed or placed on inactive status by the claimant for more than one year;

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the requesting party, pending the resolution of a matter currently before the commission of an issue similar to or related to the proposed amendments to the parameters and guidelines; and

3. Delay or postponements, made at the request of the requesting party, pending the resolution of litigation of an issue similar to or related to the proposed amendments to the parameters and guidelines

(e) The provisions of this regulation shall only apply to requests filed on or after the operative date of this regulation.

NOTE: Authority: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c), and 17532, Government Code.

ARTICLE 7 HEARINGS AND DECISIONS

ADD SECTION 1188.31 TO READ:

§ 1188.31. Dismissal of Actions.

(a) Any action, other than a test claim, subject to a hearing under Article 7, which has been postponed or placed on inactive status by the claimant or requesting party for a period of more than one year, may be dismissed by the commission on its own motion or by a motion of any party after notice and an opportunity to be heard has been made to the claimant, parties, and interested parties.

(b) A hearing on a dismissal of an action shall be conducted in accordance with Article 7 of these regulations.

(c) Notice of a hearing to dismiss an action shall be made within 60 days of the date scheduled for hearing. A copy of the notice shall also be posted electronically. ~~(d)~~ The commission shall notify the claimant, parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss within 45 days of receipt of the notice of the hearing. The claimant, parties, and interested parties shall submit an original and two (2) copies of their written comments to the commission and a copy shall be simultaneously served to all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Delays or postponements under the following circumstances will not be considered for purposes of computing whether an action has been postponed or placed on inactive status by the claimant for more than one year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the claimant or requesting party, pending the resolution of a matter currently before the commission of an issue similar to or related to the postponed action; and

3. Delays or postponements, made at the request of the claimant or requesting party, pending the resolution of litigation of an issue similar to or related to the postponed action.

(e) The provisions of this regulation shall only apply to claims or requests filed on or after the operative date of this regulation.

NOTE: Authority: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c), and 17532, Government Code.

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